MONTANA LEGISLATIVE HISTORY

Chapter 120 19 95

Bill H _____ S 67 Original bill & history ____C

H. Committee on Judiciary			S. Committee on Judiciary		
Hearing Date(s)	Feb 28	✓ C	Hearing Date(s)	Jan 11	✓ C
	March	✓ C		Jan 13	✓ C
		____C			____C
		____C			____C
Date Out		____C			

Did this bill originate in an interim committee? ____Yes ____No

Committee _____ Report _____

1/20	COMMITTEE REPORT—BILL PASSED		
1/21	2ND READING PASSED	47	0
1/23	3RD READING PASSED	48	1
	TRANSMITTED TO HOUSE		
1/24	FIRST READING		
1/24	REFERRED TO HIGHWAYS & TRANSPORTATION		
2/01	HEARING		
2/03	COMMITTEE REPORT—BILL CONCURRED		
2/04	2ND READING CONCURRED	92	6
2/06	3RD READING CONCURRED	90	9
	RETURNED TO SENATE		
2/08	SIGNED BY PRESIDENT		
2/08	SIGNED BY SPEAKER		
2/09	TRANSMITTED TO GOVERNOR		
2/14	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 62		
	EFFECTIVE DATE: 10/01/95		

SB 69 INTRODUCED BY HOLDEN

RELATE TO MILITARY JUSTICE IN MONTANA NATIONAL GUARD

BY REQUEST OF THE DEPARTMENT OF MILITARY AFFAIRS

1/07	INTRODUCED		
1/07	FIRST READING		
1/07	REFERRED TO JUDICIARY		
	TRANSMITTED TO ~~HOUSE~~ Senate		
1/11	HEARING		
1/16	COMMITTEE REPORT—BILL PASSED AS AMENDED		
1/17	2ND READING PASSED	49	0
1/18	3RD READING PASSED	48	0
	TRANSMITTED TO HOUSE		
1/19	FIRST READING		
1/19	REFERRED TO JUDICIARY		
2/28	HEARING		
3/01	COMMITTEE REPORT—BILL CONCURRED		
3/03	2ND READING CONCURRED	98	2
3/04	3RD READING CONCURRED	96	2
	RETURNED TO SENATE		
3/06	SIGNED BY PRESIDENT		
3/06	SIGNED BY SPEAKER		
3/08	TRANSMITTED TO GOVERNOR		
3/10	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 120		
	EFFECTIVE DATE: 10/01/95		

SB 70 INTRODUCED BY COLE, ET AL.

REQUIRE PURCHASE OF A MIGRATORY BIRD STAMP FOR THE HUNTING OF ALL MIGRATORY GAME BIRDS

BY REQUEST OF THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS

1/07	INTRODUCED
1/07	FIRST READING
1/07	REFERRED TO FISH & GAME
1/09	FISCAL NOTE REQUESTED
1/12	HEARING
1/12	FISCAL NOTE RECEIVED
1/12	FISCAL NOTE PRINTED
1/13	COMMITTEE REPORT—BILL PASSED

prohibit them from entering a default against either one of the alleged fathers. **Ms. Pfeiffer** said they are usually able to talk one of the alleged fathers into a blood test because he thinks he is not the father. If the Division can get one excluded, they can enter default against the other.

SENATOR GROSFIELD referenced the phrase "95% or higher statistical probability of paternity" and asked whether the natural father would always show in the 95% or higher statistical probability by blood test. If a thousand people with the same blood type took a blood test, how many of those would show a 95% or higher statistical probability of paternity. **Ms. Pfeiffer** commented that the hand out distributed earlier (**EXHIBIT 2**) explained paternity testing. They use human leukocyte antigens (HLA) testing or DNA. It is a cross matching of a number of tests. Most of the tests come back 98% to 99.8% or excluded. After the blood test has come in, the alleged fathers can ask to have their case referred back to District Court.

SENATOR GROSFIELD asked for clarification of the strikeout of the words "by rule" on page 11, line 7. **Ms. Wellbank** stated the maximum they are allowed by federal formula to reimburse hospitals is $20 for each paternity acknowledgement. The Division did not feel a rule was necessary.

SENATOR SHARON ESTRADA asked whether there is retroactive action when it takes a long time to establish paternity. **Ms. Pfeiffer** said the Court can go back to the time of birth to include birth costs. The Court uses the Child Support Guidelines and looks at what the father's income would have been during that time.

Closing by Sponsor:

SENATOR BISHOP offered no further remarks in closing.

{Tape: 1; Side: A; Approx. Counter: 43.8}

HEARING ON SB 69

Opening Statement by Sponsor:

SENATOR HOLDEN, Senate District 1, presented SB 69, which is an act relating to military justice. The Montana Department of Military Affairs currently adopts by reference federal laws, regulations, forms, precedents and usages governing the Armed Forces of the United States and has been doing so since 1974. This bill will bring the adoption of the Uniform Code of Military Justice in line with today's circumstances.

Proponents' Testimony:

Brigadier General Gary Hindoien, Assistant Adjutant General for

Air for Montana, stated that Lee v. Montana went into effect in 1983. The Lee decision takes them back to the 1974 manuals for court martials and procedures. These manuals, which were adopted in 1974, were changed and updated in 1984. This bill will clean up Title 10 of the Montana Military Code portion of the Montana Code. This is a military matter which would affect the 4,000 members of the National Guard who fall under this military jurisdiction for about 39 days a year. On page 1, line 30 of SB 69 they would like to delete "The senior judge advocate of any element of the Montana National Guard that may convene a court martial" and replace that with "When a court martial is convened the senior judge advocate of that element". In (3) the term judge advocate is replaced by adjutant general. In (3) they also change the word "soldiers" to "members".

Master Sergeant Roger A. Hagan, representing the Officer and Enlisted Associations of the Montana National Guard, presented his written testimony **EXHIBIT 3**.

{Tape: 1; Side: B; Approx. Counter: 13.1.}

Opponents' Testimony: None.

Informational Testimony: None.

Questions From Committee Members and Responses:

SENATOR STEVE DOHERTY referred to lines 14 and 15 on page 2 of SB 69 and asked if there would be any appeal beyond the adjutant general. **Lt. Col. Charles Erdmann, Senior Judge Advocate 120th Fighter Group in Great Falls,** responded that the court martial is the fact finder and also makes the determination regarding the sentence. The court martial could be appealed to the convening authority, which in Montana is the Governor. This language is intended to say that once that determination is made, that is appropriate for a petition for judicial review. The individual in the court martial has other judicial remedies available. What the courts have generally held is that from a military determination, you cannot start over again on the civilian side. **SENATOR DOHERTY** asked if an aggrieved party felt that there was constitutional flaw in the case, would they have access to the Federal Court. **Lt. Col. Erdmann** affirmed that they would have access to both state and federal court. **SENATOR DOHERTY** questioned whether active duty guardsman could go to the higher federal military courts. **Lt. Col. Erdmann** answered that active duty guardsman in Montana have the full rights afforded them for all members of the armed forces. **SENATOR DOHERTY** remarked that they would not only be adopting the act itself but also manuals, forms, precedents and usages. He questioned the term "usages". **Lt. Col. Erdmann** explained that the term usages is a unique military term found in the Uniform Code of Military Justice. Usages means the same thing as precedents.

SENATOR GROSFIELD asked the significance of substituting "members" for "soldiers". **Sgt. Roger Hagan** explained that the difference is that "soldiers" would mean Army National Guard. The National Guard is made up of both air and army and thus to make it clear they used the term "members".

SENATOR DOHERTY asked the difference between the air national guard and naval reserve units. **Sgt. Roger Hagan** explained the naval reserve is a reserve component of the navy and that has no connection with the State of Montana aside from being located here. The Montana Air National Guard is a reserve component of the Air Force. The Montana Army National Guard is a reserve component of the army and air national guard. They have dual membership and have dual responsibilities, both state and federal. The navy reserve, army reserve, air force reserve and marine corps reserve do not have state duties.

CHAIRMAN CRIPPEN asked for an explanation of the Lee v. Montana case. **Sgt. Roger Hagan** stated that the Montana Legislature adopted the Montana speed limit by making a reference to federal law. The Supreme Court found that that was an impermissible delegation of legislative authority. The Lee case says, if you adopted the UCMJ in 1974, that was the authority. There have been significant changes since 1974, so now we have to go back and adopt the UCMJ effective July 1, 1995 so we can incorporate all of those changes.

SENATOR BARTLETT questioned whether there was some way to remove the date to avoid the need to return and update periodically in the future. **Sgt. Roger Hagan** stated that the military court has held that they could not do that.

SENATOR GROSFIELD commented that he was concerned about the large amount of changes they were adopting in this bill. **Brigadier General Gary Hindoien,** explained that they should have made these changes every biennium since the Lee case. They are trying to clean up and make things more current. **Lt. Col. Mike McCabe, Judge Advocate for the Department of Military Affairs,** explained that the rules changed to afford greater protections and to clarify changes that had gone into force and effect in the Supreme Court decision and the military court decisions since the original UCMJ was adopted. The reason they want to adopt the UCMJ is to provide for uniform standards for the active duty personnel and to handle the uniquely military offenses. The most common uniquely military offense would be failure to obey an order of a superior officer. Title 32, U.S.C. covers annual training and weekend drills and in that capacity they are limited to giving letters of reprimand, order forfeiture of pay and allowances, or impose a fine of up to $200.

SENATOR REINY JABS asked whether the members were under military or civil jurisdiction during their weekend drills and annual training. **Lt. Col. McCabe** stated that any time the members are under military orders issued by the Governor of the State of

Montana under Title 32, they would be subject to the code of military justice for the State of Montana. **SENATOR JABS** further asked about the jurisdiction while overseas. **Lt. Col. McCabe** explained that the rules in effect for out of the continent travel for purposes of national guard duty are covered by Title 10. If a member commits any offense that would be subject to the Code of Military Justice, they would be prosecuted by the federal authorities under Title 10 status.

SENATOR LARRY BAER asked **Sgt. Roger Hagan** if his organization represented the consensus of the enlisted personnel. **Sgt. Roger Hagan** stated that all members of the enlisted force of the national guard of Montana are members of their association.

SENATOR CRIPPEN questioned what would happen under a Title 32 status if a felony was committed. **Lt. Col. McCabe** explained that the UCMJ on the federal side is established to protect soldiers from enforcement of state laws against active duty federal soldiers who may be in a state. In Montana, it is their policy that if there is a violation of a criminal code of the state of Montana by a guardsman, they will seek to have that prosecuted through the appropriate State District Court and then deal with that soldier militarily in the administrative matter which follows.

SENATOR GROSFIELD expressed concern that the way the bill is drafted, subsection 2, lines 21 through 28, is the only subsection which is affected by the effective date of this act and an additional amendment might be needed. **Lt. Col. McCabe** said they would certainly accept that clarification.

Closing by Sponsor:

SENATOR HOLDEN said it is timely that this bill be passed with the proper amendments to help define and clarify the military court system here in Montana.

EXECUTIVE ACTION ON SB 36

Motion\Vote: **SENATOR BISHOP moved to AMEND SB 36. EXHIBIT 4** The motion to **AMEND SB 36 CARRIED UNANIMOUSLY.**

Motion: **SENATOR BISHOP moved SB 36 DO PASS AS AMENDED.**

Discussion: **SENATOR GROSFIELD** questioned the phrase "weightier considerations of policy and logic", page 2, lines 1 through 2. **Ms. Pfeiffer** explained that they felt a need for some kind of standard. This phrase refers to the standard the court or hearing officer would use. The judge or the hearing officer would have to decide when given the facts of those particular families and the child's relationship with the possible fathers, what does the court consider as the weightier consideration of public

1

MONTANA SENATE
1995 LEGISLATURE
JUDICIARY COMMITTEE

ROLL CALL DATE 1/11/95

NAME	PRESENT	ABSENT	EXCUSED
BRUCE CRIPPEN, CHAIRMAN	✓		
LARRY BAER	✓		
SUE BARTLETT	✓		
AL BISHOP, VICE CHAIRMAN	✓		
STEVE DOHERTY	✓		
SHARON ESTRADA	✓		
LORENTS GROSFIELD	✓		
MIKE HALLIGAN	✓		
RIC HOLDEN	✓		
REINY JABS	✓		
LINDA NELSON	✓		

SEN:1995
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JUDICIARY COMMITTEE
EXHIBIT NO. 3
DATE 1/11/95
BILL NO. 69

TESTIMONY IN SUPPORT OF SENATE BILL 69

Senate Judiciary Committee
1/11/95

Presented by:
ROGER A. HAGAN
Officer/Enlisted Associations of the Montana National Guard

Mr. Chairman, members of the committee, for the record my name is MSGT Roger A. Hagan. I represent the more than 4,000 members of the Officer and Enlisted Associations of the Montana National Guard. It is my pleasure to rise in support of Senate Bill Number 69, a bill to adopt by reference The Uniform Code of Military Justice (UCMJ), as reflected in the Federal laws and regulations of the Armed Forces of the United States.

As members of the United States Army and Air Force, during our basic training active duty tour, we are schooled on the requirements and responsibilities of members of the Armed Forces with respect to the UCMJ. It is reasonable, then, to assume that similar requirements and responsibilities are conferred upon us when we return to our home state as members of the Montana National Guard.

To adopt the Federal UCMJ as our governing document for the Montana Militia is the most reasonable and prudent course of action. This bill merely adopts the most current Federal UCMJ on the effective date of this act. Additionally, it provides for the administration of military justice by outlining assignment of trial counsel and appeal procedures.

Our Associations urge the adoption of this legislation. Thank you for your favorable consideration and I remain available for questions.

DATE 1/11/95

SENATE COMMITTEE ON Judiciary

BILLS BEING HEARD TODAY: SB36 & SB69

< ■ > PLEASE PRINT < ■ >

Name	Representing	Bill No.	Check One: Support	Check One: Oppose
Chip Erdmann	MT Air Nat Guard	SB69	X as Amended	
Gary Hinojosa	MT ANG	SB 69	X as Amended	
James Taflan	MT ANG	SB69	X Amend.	
Mike McCabe	MT ANG	SB65	Amend	
Mary Ann Wellbank	SRS - CSED	SB36	✓	
Roger A Hagan	National Guard Enlisted/Officers Assoc.	SB 69	✓ as amended	
Laurie Koutnik	Christian Coalition of MT	SB36	✓	
Kate Cholewa	MT Womens Lobby	SB36	✓	

VISITOR REGISTER

LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

EXECUTIVE ACTION ON SB 69

Discussion: **Valencia Lane** explained amendment 1 was to include (1) in the effective date of this act. The remainder of the amendments were requested by the sponsor. **EXHIBIT 15**

Motion/Vote: **SENATOR HOLDEN MOVED TO AMEND SB 69.** The motion passed unanimously on oral vote.

Motion/Vote: **SENATOR HOLDEN** moved that **SB 69 DO PASS AS AMENDED.** The motion **PASSED UNANIMOUSLY** on oral vote.

EXECUTIVE ACTION ON SB 59

Motion/Vote: Motion: **SENATOR HALLIGAN** moved that **SB 59 DO PASS.** The motion passed unanimously on oral vote.

SENATE STANDING COMMITTEE REPORT

January 13, 1995

MR. PRESIDENT:
We, your committee on Judiciary having had under consideration SB69 (first reading copy -- white), respectfully report that SB69 be amended as follows and as so amended do pass.

Signed: _____
Senator Bruce Crippen, Chair

That such amendments read:

1. Page 1, line 17.
Following: "~~shall~~,"
Insert: "as in effect on [the effective date of this act],"

2. Page 1, line 30 through page 2, line 1.
Following: "(1)" on line 30
Strike: remainder of line 1 through "court-martial" on page 2, line 1
Insert: "When a court-martial is convened, the senior judge advocate of that element"

3. Page 2, line 10.
Following: line 9
Strike: "state judge advocate"
Insert: "adjutant general"
Following: "by the"
Strike: "judge advocate"
Insert: "adjutant general"
Following: ". The"
Strike: "state"

4. Page 2, line 11.
Following: line 10
Strike: "judge advocate"
Insert: "adjutant general"

5. Page 2, line 15
Strike: "soldiers"
Insert: "members"

-END-

Amd. Coord.
Sec. of Senate

SENATE JUDICIARY
EXHIBIT NO. 15
DATE 1/13/95
BILL NO. SB 69

Amendments to Senate Bill No. 69
First Reading Copy (white)

Requested by Senator Holden
For the Committee on Judiciary

Prepared by Valencia Lane
January 11, 1995

1. Page 1, line 17.
Following: "~~shall~~,"
Insert: "as in effect on [the effective date of this act],"

2. Page 1, line 30 through page 2, line 1.
Following: "(1)" on line 30
Strike: remainder of line 1 through "court-martial" on page 2, line 1
Insert: "When a court-martial is convened, the senior judge advocate of that element"

3. Page 2, line 10.
Following: line 9
Strike: "state judge advocate"
Insert: "adjutant general"
Following: "by the"
Strike: "judge advocate"
Insert: "adjutant general"
Following: ". The"
Strike: "state"

4. Page 2, line 11.
Following: line 10
Strike: "judge advocate"
Insert: "adjutant general"

5. Page 2, line 15
Strike: "soldiers"
Insert: "members"

{Tape: 1; Side: A}

HEARING ON SB 69

Opening Statement by Sponsor:

SEN. RIC HOLDEN, SD 1, said that since 1974 the Montana Department of Military Affairs has adopted by reference federal laws, regulations, forms, precedence in usage in its governing the armed forces of the United States. He said the intent of this bill was to bring the adoption of the Uniformed Code of Military Justice (UCMJ) and the federal laws, regulations, forms and usages relating to and governing the armed forces of the United States in line with today's circumstances.

Proponents' Testimony:

Lt. Col. Chip Erdmann, Staff Judge Advocate 120th Fighter Group, Montana Air National Guard, supported the bill. UCMJ is the body of law which applies to the military and sets forth its criminal actions for those on active duty status under title 10 under the U. S. Code. Reserves are covered under title 32. Montana has adopted, by reference, the UCMJ. Since 1974 when it was first adopted, there have been changes. This bill would revise it by adoption of the current version of the UCMJ so that the rules which apply for active duty will be the same as those which apply for reserve duty. The reason for this bill was based on a speed-limit case in 1981 where the Montana Supreme Court ruled that they could not adopt by reference a federal law that might later change, but that they had to adopt what was in effect at the time.

Lt. Col. Mike McCabe, Judge Advocate for Department of Military Affairs, said it was important to understand that they would not be creating a totally unrivaled court system or modifying it to give absolute authority to the military over its members. The federal statute, 32 U.S.C. section 327, indicates that courts martial only have the authority to impose a fine of not more than $200, forfeiture of pay and allowances, a reprimand or dishonorable discharge, dismissal or reduction of a noncommissioned officer in rank. He said that the importance of bringing the UCMJ current is vital because it would apply to the title 32 status or guard status but would also apply while they are on state active duty as part of the state's militia. The use of UCMJ is designed for uniquely military offenses, which he outlined by examples. Other offenses would be referred for prosecution as has always been the practice.

MSG Roger Hagan, Montana National Guard Officer and Enlisted Associations, submitted his testimony in support of SB 69. **EXHIBIT 1**

Opponents' Testimony:

None

Questions From Committee Members and Responses:

REP. AUBYN CURTISS asked why this bill would provide for the removal of the State Judge Advocate and change it to Adjutant General.

Col. McCabe said that change was made to bring it into conformity with the UCMJ. The State Judge Advocate is a legal officer who is responsible to advise the command. The commander who has courts martial convening authority would be the Adjutant General of the state of Montana with the responsibility for making the final decisions. The change is a correction in the bill as it was drafted.

REP. CURTISS asked what specific differences there were between the codes they are presently serving under and those which they wish to adopt.

Col. McCabe said the distinctions which exist are in the 1984 federal revisions to UCMJ which is related to the procedure for conducting courts martial. Some of the offenses and penalties on the active duty side were modified. Those penalties are not applicable to them and the title 32 state active duty status. The goals were to bring themselves current and in conformity to state law.

REP. CURTISS asked if this would place the guardsmen under any kind of federal military court.

Col. McCabe said it would not. It primarily would adopt the procedure of the federal military courts for use in the state of Montana as state courts under the Montana National Guards, but would not subject them to federal courts.

Closing by Sponsor:

SEN. HOLDEN closed remarking on the support for it from the Governor's Office. **REP. CHRIS AHNER** agreed to carry the bill.

HEARING ON SB 77

Opening Statement by Sponsor:

SEN. CASEY EMERSON, SD 14, submitted SB 77 for the committee's consideration. SB 77 was presented as a constitutional amendment which would transfer the authority to adopt rules governing admission to the bar and the conduct of members of the bar from the Montana Supreme Court to the Judicial Standards Commission.

HOUSE OF REPRESENTATIVES

Judiciary

ROLL CALL DATE 2/28/95

NAME	PRESENT	ABSENT	EXCUSED
Rep. Bob Clark, Chairman	✓		
Rep. Shiell Anderson, Vice Chair, Majority	✓		
Rep. Diana Wyatt, Vice Chairman, Minority		✓	
Rep. Chris Ahner	✓		
Rep. Ellen Bergman	✓		
Rep. Bill Boharski	✓		
Rep. Bill Carey	✓		
Rep. Aubyn Curtiss	✓		
Rep. Duane Grimes	✓		
Rep. Joan Hurdle	✓		
Rep. Deb Kottel	✓		
Rep. Linda McCulloch	✓		
Rep. Daniel McGee			✓
Rep. Brad Molnar		✓	
Rep. Debbie Shea	✓		
Rep. Liz Smith	✓		
Rep. Loren Soft	✓		
Rep. Bill Tash	✓		
Rep. Cliff Trexler	✓		

EXHIBIT 1
DATE 2/28/95
SB 69

TESTIMONY IN SUPPORT OF SENATE BILL 69

House Judiciary Committee
02/28/95

Presented by:
ROGER A. HAGAN
Officer and Enlisted Associations of the Montana National Guard

Mr. Chairman, members of the committee, for the record my name is MSG Roger A. Hagan. I represent the more than 4,000 members of the Officer and Enlisted Associations of the Montana National Guard. It is my pleasure to rise in support of Senate Bill 69, a bill to adopt by reference The Uniform Code of Military Justice (UCMJ), as reflected in the Federal laws and regulations of the Armed Forces of the United States.

As members of the United States Army and Air Force, during our basic training active duty tour, we are schooled on the requirements and responsibilities of members of the Armed Forces with respect to the UCMJ. It is reasonable, then, to assume that similar requirements and responsibilities are conferred upon us when we return to our home state as members of the Montana National Guard.

To adopt the Federal UCMJ as our governing document for the Montana Militia is the most reasonable and prudent course of action. This bill merely adopts the most current Federal UCMJ on the effective date of this act. Additionally, it provides for the administration of military justice by outlining assignments of trial counsel and appeal procedures.

Our Associations urge the adoption of this legislation. Thank you for your favorable consideration of this bill and I will remain available for questions.

HOUSE OF REPRESENTATIVES
VISITORS REGISTER

JUDICIARY COMMITTEE DATE 2/28/95

BILL NO. SB 69 SPONSOR(S) Sen. Holden

PLEASE PRINT PLEASE PRINT PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	Support	Oppose
Michael J. McCabe	MT Natl Guard	✓	
Roger A. Hagan	Officer + Enlisted Assoc of the N.G.	✓	
Chip Erdmann	MT Air Nat Guard	X	
Jim Tafland	MT Air Nat'l Guard	X	

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

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CS-14

Discussion: **REP. ANDERSON** said he was going to vote against the motion to concur because he was not convinced that there is a shortage of gun safety instructors and he did not see what the bill was intended to accomplish. He was unaware of any lawsuits which had been brought against gun instructors and there is no vicarious liability for gun instructors for the conduct of their students. This bill might set the instructors up for greater liability than they currently have. In the event that there is some liability held to that gun instructor, he wondered if the level should be raised to gross negligence because they were teaching 12-year-old's. He felt the bill was before its time.

CHAIRMAN CLARK said that 12-year-old's have been taught firearms safety for many years which he believed had prevented thousands of problems. He questioned waiting to provide the immunity until after a lawsuit occurs.

Motion: **REP. BOHARSKI MOVED HB 90 BE CONCURRED IN AS AMENDED.**

Discussion: **REP. MC GEE** talked about why he had decided to oppose the bill. He said he thought the background for it was to be able to set up other kinds of firearms training, not necessarily safety instruction, whereby the people would act out illegally and the bill would set up a condition in which the instructors of the firearms handling would be immune from prosecution. He said he upholds the second amendment of the Constitution and wants proper and safe training.

REP. BOHARSKI said it seemed to him that the bill was attempting to provide protection for unwarranted lawsuits against instructors who may have trained someone to use a firearm and subsequently used it to defend themselves. He could not see any reason to withhold gross negligence protection from them.

REP. ANDERSON said he could not see how liability could be tied back to an instructor who was not even present at the time the person used the firearm to protect themselves. He read the bill to provide immunity to an instructor who was teaching 12-year-old's and because he was an inept teacher a student might be injured in the process of the course. He did not want to give him immunity until he reaches the gross negligence standard.

CHAIRMAN CLARK said this was about the conduct, acts, or omissions of the students and not for the instructor himself while he is instructing the course.

Motion/Vote: **REP. ANDERSON MOVED TO TABLE HB 90. The motion carried 11 - 6 by roll call vote.**

EXECUTIVE ACTION ON SB 69

Motion: **REP. SHEA MOVED SB 69 BE CONCURRED IN.**

Discussion: **REP. ANDERSON** restated the intent of the bill was to adopt by reference the latest military code.

Vote: **The motion carried 15 - 2, REPS. CURTISS and BOHARSKI voted no.**

EXECUTIVE ACTION ON SB 165

Motion: **REP. MC GEE MOVED SB 165 BE CONCURRED IN.**

Discussion: **REP. CAREY** asked if there were any constitutional issues with this bill.

Mr. MacMaster said he did not see any.

REP. MC GEE reported that a representative of the Department of Justice had said that this bill was as far as the state could go in clearing up the problems with the appeals system.

Vote: **The motion carried unanimously by voice vote.**

Motion: **REP. TREXLER MOVED TO ADJOURN.**

(Comments: This set of minutes is complete on two 60-minute tapes.)

HOUSE STANDING COMMITTEE REPORT

March 1, 1995

Mr. Speaker: We, the committee on **Judiciary** report that **Senate Bill 69** (third reading copy -- blue) **be concurred in**.

Signed: Bob Clark

Bob Clark, Chair

Carried by: Rep. Ahner

3/1

Committee Vote:
Yes 15, No 2.

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